



UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2017/2018

ULT 2612 – LAW OF TORTS I

(All sections / Groups)

24th OCTOBER 2017
Reading Time: 2.30 – 2.45 pm
(15 Minutes)
Answering Time: 2.45 – 5.45 pm
(3 Hours)

INSTRUCTIONS TO STUDENTS

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of 3 pages with **PART A** and **PART B**. Students have to answer **one question only** from **PART A** and answer **all questions** from **PART B**.
3. All questions carry equal marks and the distribution of the marks for each question is given.
4. Please write all your answers in the Answer Booklet provided.

PART A

Answer one (1) question only.

QUESTION 1A

The Court viewed the Bolam's approach as being "over protective and deferential" to the medical profession. It is the court that determines reasoning of doctors' conduct, and not the profession. The Federal Court opined that "the *Rogers v Whitaker* test would be a more appropriate and a viable test of this millennium."

Based on the above, discuss the distinguished features between the above stated tests and their current applications in the area of medical negligence in Malaysia.

(Total: 25 marks)

QUESTION 1B

Moon and Sun are best friends. They went for a trip at Pulau Langkasuka during the semester break. While Moon was driving, the car collided with a trailer. As a result, Moon was severely injured. His head was badly damaged and his spinal column has been dislocated. He felt very painful once he moved. When Sun saw Moon crying in pain, he became so panic and trauma. He later suffered psychiatric illness. He is now undergoing a treatment for anxiety neurosis.

Moon was then brought by an ambulance to Illvera Hospital and Dr Sheng was of the opinion that Moon needed an urgent surgery to lessen the pain. Unfortunately, after the surgery Moon was paralysed. Looking at his condition which was getting worse later on, Dr Sheng performed a second surgery. His condition became better but the paralysis remained.

Initial investigation shows that the trailer driver, Rudy has caused his trailer to bump into Moon's car at a junction. Moon is now unable to work due to his permanent disability. Moon claimed that his paralysis was due to the surgery and not the accident.

Moon seeks your advice in order to recover damages from Rudy and Dr Sheng. He claimed that Dr Sheng failed to explain the risk of paralysis arising from the first surgery. In the meantime, Sun also seeks your advice to recover compensation against Rudy for causing his nervous shock. Advise them.

(Total: 25 marks)

PART B

Answer all questions.

QUESTION 2

Ben and Mark are rivals in sports. Both of them are representing Martin Lew Club and George Harry Club respectively in tennis and soccer. Last month, they took parts in few games in 2017 La Vista Sports Championship. All clubs were trying their level best in winning the games.

Continued...

Ben and Mark stayed in the same neighbourhood. One day, while passing by Mark's house, Ben decided to do something. From outside, he saw Mark's tennis racquet hanging outside the house. He went inside the house compound, took the racquet and broke it into pieces. Mark, who heard something, went out from the house. He saw Ben running away from the house.

He chased Ben and they quarrelled over few issues in front of a field. Mark tried to punch Ben's face. Ben ducked down and suddenly, he hit Leo who has just reached there. Leo was so angry and in retaliation, tried to kick Mark. However, he was stopped by some passers-by.

In the meantime, Mark's neighbour, Jason borrowed a netbook from him since last year. Mark asked him to return the netbook for few times but to no avail. Only last month, he returned the netbook to Mark. Unfortunately, the netbook was in a bad condition.

Mark claimed compensations from both Ben and Mark. However, they refused to pay.

Advise all parties on their possible liabilities.

(Total: 25 marks)

QUESTION 3

Last few months, Rita, Lala and Nuree went to Singgahsana Island for a vacation. They booked a room at De Rossa Hotel for 3 days and 2 nights. Unfortunately, some parts of the hotels were under constructions and renovation. Thus, the Hotel Management had put few notices to remind the visitors of the potential danger.

One day, while Rita was walking at the hotel lobby she suddenly fell down. The floor was slippery and the cleaner has not yet come to clean it. No notice or signage was put to warn the visitors about it. Consequently, Rita's legs were injured and the whole body was painful.

Lala, who was waiting for Rita went to the nearby toilet. She tried to switch the light on as the toilet was dark. However, she had mistakenly touched a bare electric wire. As a result, she was electrocuted and suffered hand injuries.

Nuree who was looking for her friends, had mistakenly entered into the hotel laundry. There was plenty of detergent spilled onto the floor of the laundry entrance but she did not notice it. Unfortunately, she fell down on the slippery floor and got herself injured.

Nana, a 10-year-old child, was wandering around outside the hotel while waiting for her parents. She came across a mini theme park which was still closed. Some parts of the theme park were under maintenance. She entered the park as nobody was around. She tried some games and machines in the parks. The maintenance workers did not notice her presence. As a result, she was electrocuted and badly injured.

Advise the hotel management on their possible liabilities against Rita, Lala, Nuree and Nana.

(Total: 25 marks)

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QUESTION 4

In proving defamation, the plaintiff must establish that the words are defamatory, in the sense that the words have the tendency to lower the estimation of the plaintiff in the mind of right-thinking members of society generally.

In relation to this, words may be defamatory in one of three ways. Discuss all the three ways with special references to decided cases.

(Total: 25 marks)

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